

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA  
EASTERN DIVISION

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MARLENE MAUER,

Plaintiff,

v.

ICON HEALTH AND FITNESS, INC.,  
SEARS, ROEBUCK AND CO., a/k/a SEARS  
CROSSROADS CENTER STORE #1072, and  
SEARS HOME SERVICES, LLC,

Defendants.

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Case No. 6:18-cv-2009

Bremer County Case No. LACV005874

NOTICE OF REMOVAL

Defendants, Icon Health and Fitness, Inc., (“Icon”), Sears, Roebuck, and Co. (“Sears”), and Sears Home Services, LLC (“Sears Home Services”) (collectively “Defendants”), pursuant to 28 U.S.C. § 1441 and Local Rule 81, file their Notice of Removal, and in support thereof state as follows:

1. Defendants are the named defendants in a civil action filed on January 5, 2018 in the Iowa District Court for Bremer County entitled: Marlene Mauer v. Icon Health and Fitness, Inc., Sears, Roebuck and Co., a/k/a Sears Crossroads Center Store #1072, and Sears Home Services, LLC.

2. That action is docketed as Bremer County Case No. LACV005874.

3. Plaintiff served Defendant Sears Roebuck and Co., the first Defendant to be served, on January 9, 2018. Defendant Sears Home Services, LLC was served on January 30, 2018. Defendant Icon Health and Fitness, Inc. was served on January 30, 2018.

4. Accordingly, this Notice of Removal is timely pursuant to 28 U.S.C. § 1446(b).

5. This action is a civil suit based on personal injuries.

6. Plaintiff is seeking damages allegedly sustained during the use of a treadmill. Plaintiff is seeking damages “sufficient to compensate her for her personal injuries and damages plus interest and costs as allowed by law.” Pet. at 3-12. Thus, Plaintiff’s petition on its face does not explicitly indicate the exact amount in controversy.

7. Based on previous discussions between Plaintiff and Defendants, it is apparent that Plaintiff will seek in excess of \$75,000 during the trial of this matter.

8. Plaintiff is an Iowa citizen. Pet. ¶ 1.

9. Icon is a Delaware corporation with its principal place of business in Logan, Utah.

10. Sears is a New York corporation with its principal place of business in Hoffman Estates, Illinois.

11. Sears Home Services is a Delaware limited liability company with its principal place of business in Hoffman Estates, Illinois.

12. There is complete diversity of citizenship between Plaintiff and Defendants in this action.

13. The Northern District of Iowa has jurisdiction of this action based on diversity of citizenship jurisdiction pursuant to 28 U.S.C. § 1332.

14. Venue is proper in this Court under 28 U.S.C. § 1441(a) because this district and division embrace Bremer County, Iowa, the place where this action was originally filed and has been pending.

15. In accordance with 28 U.S.C. § 1446(a) and Northern District of Iowa Local Rule 81, Plaintiffs have attached as Exhibit A all process, pleadings, and orders in the state court action.

16. Defendants served this Notice of Removal on counsel for Plaintiff on the date set forth in the certificate of service shown below.

17. Pursuant to Local Rule 81(a)(2), there are no matters pending in state court requiring resolution by this Court.

18. Pursuant to Local Rule 81(a)(3), the names of counsel that have appeared in state court, with their office addresses, telephone numbers, facsimile numbers, e-mail addresses, and names of the parties they represent, are as follows:

Samuel C. Anderson  
Swisher & Cohrt, PLC  
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E-mail: [sanderson@s-c-law.com](mailto:sanderson@s-c-law.com)

19. By filing this Notice of Removal, Defendants do not waive any defenses that may be available to them.

20. All requirements of jurisdiction established by 28 U.S.C. § 1332 have been satisfied, and this action is, therefore, removable pursuant to 28 U.S.C. § 1441.

WHEREFORE Defendants, individually and in their corporate capacities, hereby remove the state court action pending as Case No. LACV005874 in the Iowa District Court for Bremer County to this United States District Court.

Respectfully submitted,

WHITFIELD & EDDY, P.L.C.  
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By /s/ Matthew Jacobson

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ATTORNEYS FOR DEFENDANTS

Original filed.

Copy to:

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ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause or to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on February 6, 2018.

By: ☒ U. S. Mail                      ☐ eMail  
     ☐ Hand Delivered                      ☐ Overnight Courier  
     ☐ Certified Mail                      ☒ Other: Iowa EDMS  
     ☐ FAX

Signature: /s/ Zach Hermesen